



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MGE/171777

PRELIMINARY RECITALS

Pursuant to a petition filed January 29, 2016, under Wis. Stat., §49.45(5), to review a decision by the Shawano County Dept. of Social Services in regard to Medical Assistance (MA), a hearing was held on June 2, 2016, at Shawano, Wisconsin, with the parties appearing by telephone. Hearings set for March 15, April 13, and May 11, 2016 were rescheduled at the petitioner's request.

The issue for determination is whether the agency correctly determined petitioner's cost of care for the months prior to January, 2016.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Shawano County Dept. of Social Services
607 E. Elizabeth Street
Shawano, WI 54166-3105

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a nursing home resident of Shawano County. His wife lives in the community.

2. Petitioner's wife filed a nursing home MA application on his behalf on December 17, 2015, seeking coverage back to September 1, 2015. Petitioner operated a lumber company prior to his admission to the nursing home; his son took over after that to liquidate the operation.
3. The county obtained petitioner's 2014 income tax return. Based upon the net business income on that return the county determined that monthly earned income was \$3,340.92. Petitioner also had \$1,713.70 in social security and other income. After allocating income to petitioner's wife, it determined that the monthly cost of care was \$3,218.66.
4. The county ended the cost of care effective January 1, 2016 after it was reported that the business was dissolved.
5. Petitioner's wife submitted self-employment income reports (SEIRFs) for September through December, 2015. She reported no business income in September, October, and November, and \$864.36 net income in December.

DISCUSSION

State MA law has special provisions for self-employed individuals. For an ongoing business the county should take the most recent business income tax return, find net income and add back certain deductions such as depreciation, and then divide by twelve to get monthly income for MA purposes. Wis. Admin. Code, §DHS 103.07(2)(a); MA Handbook, §15.6.5.2. If the tax return does not accurately reflect actual circumstances because of a substantial increase or decrease in business, the agency shall calculate income based upon anticipated earnings. Id.; Handbook, §15.6.5.3. The Handbook provision describes situations where anticipated earnings are used, including where the owner is ill and thus unable to operate the business.

When anticipated earnings are used the applicant should complete SEIRFs for the months in operation after the change. Handbook, §15.6.5.3.

Petitioner's family reported early on in the process that the business had a change of circumstances due to petitioner's suddenly entering the nursing home in July. Petitioner's wife was given the opportunity to fill out SEIRFs, and she reported no income except in December (she went back to September, rather than July, because they were not seeking MA coverage until September). Petitioner's son explained at the hearing that although he kept the business going, essentially all that occurred were payments on pre-existing contracts and expenses. That is why there was income in December; pre-existing payments were made to the business.

The county took the position that the business still was being operated by petitioner's son, and that petitioner remained the owner. Thus the tax returns remained the best evidence of income.

I conclude that the self-employment income for the last four months of 2015 should have been based upon the SEIRFs filled out by petitioner's wife (as power-of-attorney for petitioner). Clearly there was a change of business circumstances. Petitioner's son testified that they stopped doing new business and basically just waited for prior-contracted payments to come in. When I asked about the 2015 tax return petitioner's son explained that the net income was higher because of how payments and expenses were divvied up between 2015 and 2016. That information made it all the clearer that the business no longer was operating as it had before petitioner's illness.

I will order the county to re-determine petitioner's cost of care for the months of September through December, 2015. September through November should include zero self-employment income, and December should include \$864.36. Anytime a self-employed person fills out SEIRFs there has to be an

assumption that the person is honestly completing the forms, and under oath petitioner's wife attested to the accuracy of the SEIRFs in this case.

CONCLUSIONS OF LAW

The agency should have used SEIRFs to determine petitioner's self-employment income because there was a substantial change in the business when he entered the nursing home.

THEREFORE, it is

ORDERED

That the matter be remanded to the county with instructions to re-determine petitioner's nursing home cost of care for the last four months of 2015 using zero self-employment income for September, October, and November, and \$864.36 for December. The county shall do so within 10 days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 9th day of June, 2016

\s\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on June 9, 2016.

Shawano County Department of Social Services
Division of Health Care Access and Accountability